

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

### Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 206.5(2) and 206.6(5) as amended by 2008 Iowa Acts, House File 2551, the Department of Agriculture and Land Stewardship amends Chapter 45, “Pesticides,” Iowa Administrative Code.

The amendments outline the requirements for the supervision of aerial pesticide applicators, the qualifications and duties of the aerial applicator consultant, and the procedures for aerial application. The amendments also outline the license, certification, and continuing instruction requirements for aerial applicators operating in Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 19, 2008, as **ARC 7339B**. After the Notice was published and comments were received, the Department revised the definition of “resident of Iowa” by eliminating the voter registration requirement and by modifying the place of business requirement to be physical, not principal. The Department changed the term used to describe the person responsible for coordinating pesticide applications from “aerial applicator supervisor” to “aerial applicator consultant.” The requirements for listing the GPS coordinates on field maps were changed to permit other descriptions of field locations.

The Department adopted the amendments on January 21, 2009.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendments should be waived and the amendments should be made effective on February 1, 2009, so as to provide clarification, guidance and appropriate training for applicators who must comply with the provisions.

No waiver provision is included in these amendments; however, the Department’s general waiver rule applies.

These amendments are intended to implement Iowa Code chapter 206 as amended by 2008 Iowa Acts, House File 2551.

These amendments became effective on February 1, 2009.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in subrule **45.1(1)**:

“*Aerial applicator*” means a licensed commercial applicator, certified in category #11, Aerial Application, who applies pesticides by using aircraft in compliance with Federal Aviation Administration regulations under Title 14 CFR Part 137 (1-1-08 Edition).

“*Aerial applicator consultant*” means a person who is a resident of Iowa and holds a valid applicator certification in category #11, Aerial Application, and either an Iowa commercial applicator license or pesticide dealer license, who coordinates the commercial application of pesticides by aerial applicators.

“*Resident of Iowa*,” for purposes of subrule 45.22(17), means a person who meets the following qualifications:

1. The person is an owner or employee of a corporation, association, partnership, company, or firm that maintains a physical place of business located within Iowa.
2. Agricultural aircraft owned and operated by the person are registered with the Iowa department of transportation.

ITEM 2. Adopt the following **new** implementation sentence in rule **21—45.1(206)**:

This rule is intended to implement Iowa Code section 206.5 and section 206.6 as amended by 2008 Iowa Acts, House File 2551.

ITEM 3. Adopt the following **new** subrule 45.22(17):

**45.22(17) Requirements for commercial aerial applicator and aerial applicator consultant.**

a. *Commercial aerial applicator license.* The licensed aerial applicator applying pesticides to agricultural land shall operate in Iowa in consultation with an aerial applicator consultant. The application form for a commercial aerial applicator license shall be provided by the pesticide bureau.

The completed application form, together with supporting documentation, will verify compliance with Iowa Code chapter 206 and the rules of this chapter. An aerial applicator license may be issued when the applicant has provided the name and license number of the aerial applicator consultant and other required information on the application form, passed the required certification examinations, and paid the commercial applicator license and certification fees in compliance with Iowa Code sections 206.5 and 206.6.

*b. Aerial applicator consultant duties.* An aerial applicator consultant shall:

(1) Complete requirements for a category #11 aerial applicator certification and either a commercial pesticide applicator license or pesticide dealer license.

(2) Register with the pesticide bureau on forms provided by the pesticide bureau.

(3) Meet with each aerial applicator under the consultant's consultation prior to application of pesticides and verify compliance with Iowa's pesticide rules, the requirements of the Federal Aviation Administration, and the requirements of the Iowa department of transportation using a checklist provided by the pesticide bureau. A copy of the completed checklist shall be maintained on file for three years with the aerial applicator consultant.

(4) Provide detailed aerial maps for the intended application location which clearly depict field boundaries, roads, dwellings, adjacent fields, water bodies, and other pertinent information, as well as county, township and section and latitude/longitude if available.

(5) Maintain daily communication with the aerial applicator when pesticide applications are performed with a minimum of one meeting in person each day to emphasize safe pesticide application and handling procedures.

(6) Maintain daily oversight of pesticide handlers who supply or mix pesticides for the aerial applicator under the consultant's consultation to ensure required personal protection equipment is utilized.

(7) Provide information to the aerial applicator regarding sensitive areas listed on the department's sensitive crop registry and arrange for proper protection of registered apiaries. The aerial applicator consultant shall identify nearby sensitive areas including the location of endangered species as identified by the U.S. Environmental Protection Agency (EPA) and listed on the pesticide bureau's Web site, water bodies in or adjoining the field of application, roads adjoining the field of application, and places adjoining the field of application which may be occupied by people, including farmworkers.

(8) Provide instructions for proper emergency response procedures for the aerial applicator and pesticide handlers in the case of a pesticide spill or accident. Require that while in the air all pilots have an electronic communication device capable of communicating with a consultant.

(9) Provide information immediately upon request to regulatory officials regarding the identification of a pesticide applied to an area of concern and the name and license number of the applicator working under the consultant's consultation.

(10) Notify the aerial applicator in person and in writing upon termination of consultation services. The aerial applicator shall notify the pesticide bureau when the aerial applicator begins working with a new aerial applicator consultant.

*c. Procedures for aerial application.* The aerial applicator consultant shall provide the licensed aerial applicator the following:

(1) Name and telephone number where the consultant may be reached during hours of operation.

(2) Name and address or location of the property where the pesticide will be applied including detailed maps of fields which clearly depict the field boundaries, roads, dwellings, adjacent fields, water bodies, and other pertinent information, as well as county, township and section and latitude/longitude if available.

(3) Name of the pesticide(s) to be applied and copies of each label along with instructions necessary to comply with Iowa's pesticide rules. The aerial applicator consultant shall verify that the aerial applicator has read and understands the label instructions.

(4) Maps of the intended location for each pesticide application reviewed and approved by the aerial applicator consultant. The aerial applicator consultant shall provide information to the aerial applicator

regarding sensitive areas listed on the department's sensitive crop registry and shall arrange for proper safety precautions to protect registered apiaries.

(5) The identification of nearby sensitive areas including the location of endangered species as identified by EPA and listed on the pesticide bureau's Web site, water bodies in or adjoining the field of application, roads adjoining the field of application, and places adjoining the field of application which may be occupied by people, including farmworkers.

*d. Responsibility.* The aerial applicator is responsible for applying pesticides in compliance with label directions and Iowa's pesticide rules. The aerial applicator consultant supplying a pesticide for application by the aerial applicator is responsible for handling and mixing the pesticides according to label directions and Iowa's pesticide rules.

*e. Aerial applicator certification and continuing instruction.* An aerial applicator and aerial applicator consultant shall pass an examination for initial certification. An aerial applicator from a state with an approved reciprocal certification agreement will be eligible for reciprocal certification. Each certified aerial applicator and aerial applicator consultant shall participate in a program of continuing instruction which shall consist of either an examination or educational program approved by the department. The continuing instruction program shall include information regarding the safe application and handling of pesticides and responsible operation of aircraft spray equipment.

ITEM 4. Amend rule **21—45.22(206)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 206.2, 206.4, 206.5, 206.7, and 206.31 ~~and Iowa Code Supplement section 206.5~~ and Iowa Code section 206.6 as amended by 2008 Iowa Acts, House File 2551.

[Filed Emergency After Notice 1/21/09, effective 2/1/09]

[Published 2/11/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/11/09.